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Expert Meeting on Competition Law and Policy
Geneva, 13 November 1996
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

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II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1. Election of officers

In keeping with the cycle of rotation for the election of Chairman and Rapporteur followed by the former Intergovernmental Group of Experts on Restrictive Business Practices, and taking into account the fact that the President of the Third United Nations Conference to Review All Aspects of the Set (13-21 November 1995) was from Latin America, it is proposed that the Chairman for the first session of the Expert Meeting on Competition Law and Policy be elected from Group B and the Rapporteur from Group C (Latin America). Three Vice-Chairmen would be elected as follows: one from Group A (Asia and Africa), one from Group B and one from Group D.

Item 2. Adoption of the agenda and organization of work

In line with paragraph 114 of the Midrand Declaration 1/ the Expert Meeting on Competition Law and Policy shall have a duration of three days. It is therefore suggested that the first plenary meeting on 13 November 1996 be opened at 10 a.m. sharp and be devoted to procedural matters (items 1 and 2) and to introductory statements. The closing plenary meeting, on 15 November, would be devoted to the work programme (item 4), provisional agenda for the second session of the Expert Meeting (item 5), other business (item 6) and adoption of the report (item 7). 2/

This would leave the remaining meetings, from the afternoon of 13 November to the morning of 15 November, for consultations on competition law and policy, including studies related to the provisions of the Set of Principles and Rules (item 3).

Item 3. Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

In paragraph 9 of the resolution adopted by the Third United Nations Conference to Review All Aspects of the Set (the Third Review Conference) at its closing meeting, on 21 November 1995, the Review Conference decided that:

> "(a) Future Intergovernmental Group of Experts sessions should include at least three days for informal multilateral consultations among participants on competition law and policy issues with special focus on practical cases. Countries wishing to participate in the consultations are encouraged to give advance notice of their proposed RBP issues, in order to maximize the opportunities for exchange of views and experiences with member countries. After an understanding is reached as to the subject-matter of the consultations, a detailed agenda and timetable for the consultations should be disseminated by the secretariat at least one month in advance of the session of the Intergovernmental Group of Experts so as to permit delegations from all member States to participate in the informal consultations, and the likelihood of participation in the consultations by competition experts from all regions should be ascertained;

"(b) As part of such consultations, the Intergovernmental Group of Experts should undertake a comprehensive informal exchange of views and experiences of several developed and other interested countries on issues relating to cases concerning RBPs and other issues relevant to competition which have been raised by developing or other countries;

"(c) Also as part of such consultations, the Intergovernmental Group of Experts should organize several small workshops at which the secretariat and a few experts from developed and other countries would exchange informally views and experiences with developing and other countries wishing to take advantage of such an exchange of views for the purpose of developing their analysis of specific restrictive business practices issues in a given country."

When the resolution was adopted, the Third Review Conference obviously considered that future sessions would continue to have a five-day duration. But in view of the provisions of the Midrand Declaration that henceforth expert meetings should last for a maximum of three days, it is suggested that the consultations on item 3 could be of a full two-day duration. Countries, especially developing and least developed countries, are invited to make known as soon as possible their proposals for subjects for consultations, in order for the secretariat to be able to prepare a detailed agenda and timetable for the consultations, and to disseminate it in good time, as requested in the resolution.

In line with the request contained in paragraph 9 (c) of the same resolution, small workshops could be organized during which the secretariat and a few experts from developed and other countries would exchange informally views and experiences with developing and other countries.

Also, under this item, the secretariat was requested by the Third Review Conference to "revise documents TD/RBP/CONF.4/2, TD/RBP/CONF.4/6, TD/RBP/CONF.4/7, TD/RBP/CONF.4/8, TD/B/RBP/81/Rev.4 and UNCTAD/ITD/15, in the light of comments by member States made at the Conference or to be sent in writing by 31 January 1996 for submission to the next session of the IGE (para. 1 of the resolution). For reasons of limitation of the number of reports submitted to expert meetings (only two documents will be submitted to such meetings), under this agenda item, the experts will have before them a revised version of document TD/RBP/CONF.4/8 (see TD/B/COM.2/EM/2) and a note (TD/COM.2/EM/3) containing (i) extracts of the comments received by the secretariat, in response to the request above, and (ii) "a draft outline of a possible study on empirical evidence of the benefits (including the benefits for consumers) to be gained by developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development", as requested by the Third Review Conference (para. 8 of the resolution). 3/

Item 4. Work programme, including technical assistance, advisory and training programmes on competition law and policy

Under this item, the Expert Meeting on Competition Law and Policy is expected to give guidance to the UNCTAD secretariat as to further work it is requested to undertake.

In particular, the Expert Meeting will have before it a progress report on "a review of technical cooperation activities undertaken by UNCTAD and other intergovernmental organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance for capacity-building in the area of competition law and policy", in line with the request contained in paragraph 4 of the resolution adopted by the Third Review Conference. This will be contained in part (iii) of the note (TD/COM.2/EM/3) prepared by the secretariat.

On the basis of the preliminary version of the review of technical cooperation, the Expert Meeting is expected to decide on ways and means to implement the points made by the Third Review Conference in the same resolution (para. 4) as follows:

(a) Encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;

(b) Encouraging developing countries and countries in transition to identify specific competition law and policy areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;

(c) Identifying common problems encountered in the competition law and policy area which might receive attention in national and regional seminars;

(d) Enhancing cost-effectiveness, complementarity and collaboration among providers and recipients of technical cooperation, both in terms of the geographical focus of technical cooperation activities, taking into account the special needs of African countries, and the nature of cooperation undertaken;

(e) Preparation and execution of national, regional and subregional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries, or subregions which have not received such assistance so far, especially in the field of law drafting and staff training, and enforcement capacity;

(f) Mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area.

Item 5. Provisional agenda for the second session of the Expert Meeting

Assuming that the Expert Meeting will recommend to the Commission on Investment, Technology and Related Financial Issues that it convene a second session in 1997, the UNCTAD secretariat will submit during the session a draft provisional agenda for the second session of the Expert Meeting on Competition Law and Policy.

Item 6. Other business

Item 7. Adoption of the report of the Expert Meeting on its first session

It is recalled that UNCTAD IX in the Midrand Declaration decided that the newly established Commission on Investment, Technology and Related Financial Issues would deal, inter alia, with the work on competition, as set out in paragraph 91 (iii) of the Midrand Declaration, namely:

> "Examining issues related to competition law of particular relevance to development: continuing analytical work on restrictive business practices; assisting (...) countries to formulate competition policies and legislation; institution-building; focusing on Africa by holding a regional meeting, creating relevant inventories and databases, and establishing a technical cooperation programme."

Hence, the Trade and Development Board, at its thirteenth executive session, held on 8 July 1996, decided that one item on the agenda of the first session of the Commission would be devoted to "Issues related to competition law of particular relevance to development" (item 4). Under that item of its agenda, "The Commission will focus on examining issues related to the subject: continuing analytical work on restrictive business practices and assistance in formulating competition policies and legislation. To facilitate the discussion, experts will prepare a report."

As requested by the Board, the Expert Meeting on Competition Law and Policy will report to the Commission on Investment, Technology and Related Financial Issues, which is scheduled to take place during the week of 18-22 November, immediately following the Expert Meeting. Accordingly, the Chairman of the Expert Meeting on Competition Law and Policy, or a representative designated by him, will report to the Commission on the first session of the Expert Meeting and participate in the discussion, as appropriate.

Notes

1/ Document TD/377.

2/ In view of the short duration of the session, the Rapporteur would be authorized to complete the final report after the close of the session.

3/ It should be noted that recurrent documents, such as the Handbook of Competition Legislations and the Directory of Competition Authorities will continue to be published by the UNCTAD secretariat, but as non-sessional documents. A limited number of these will hopefully be available in their preliminary form during the Expert Meeting.